

N4e2ZhoS kjc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

22 Cr. 606 (PGG)

5 JAMES ZHONG,

6 Defendant.

7 -----x

Sentencing

8 April 14, 2023
9 3:00 p.m.

10 Before:

11 HON. PAUL G. GARDEPHE,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: DAVID FELTON

18 Assistant United States Attorney

19 BACHNER & ASSOCIATES, P.C.

Attorneys for Defendant

20 BY: MICHAEL F. BACHNER

21 GARLAND SAMUEL & LOEB, P.C.

22 Attorneys for Defendant

23 BY: JOHN A. GARLAND
24
25

N4e2ZhoS kjc

(Case called)

THE DEPUTY CLERK: Counsel for the government, please state your appearance.

MR. FELTON: Good afternoon, your Honor. David Felton for the government, joined by IRS Special Agents Trevor McAleenan and Michael Lane.

THE DEPUTY CLERK: Counsel for defendant, please state your appearances.

MR. BACHNER: Good afternoon, your Honor. Michael Bachner, of Bachner & Associates, P.C., on behalf of Mr. Zhong.

MR. GARLAND: Good afternoon, your Honor. John Garland, Atlanta, Georgia, from the law firm of Garland, Samuel & Loeb, for Mr. Zhong.

THE COURT: This matter is on my calendar for purposes of sentencing.

In preparation for sentencing I have read the presentence report dated January 31, 2023. I have read the defendant's sentencing brief. I have read a psychiatric report. I have read a collection of letters from friends all docketed on March 24, 2023; another letter of support submitted on March 26, 2023; and another collection of letters all docketed on April 3, 2023. I have also read the government's submission dated March 31, 2023.

Mr. Bachner, have you read the presentence report, its recommendation, and discussed it with Mr. Zhong?

N4e2ZhoS kjc

1 MR. BACHNER: Yes, your Honor, I have.

2 THE COURT: And Mr. Zhong, have you read the
3 presentence report, its recommendation, and discussed it with
4 your attorneys?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Mr. Bachner, do you have any objections to
7 the factual portions of the presentence report?

8 MR. BACHNER: No, your Honor.

9 THE COURT: Does the government have any objections
10 to the factual portions of the presentence report?

11 MR. FELTON: No, your Honor.

12 THE COURT: I hereby adopt the findings of fact set
13 forth in the presentence report.

14 Although I am not required to impose sentence in
15 accordance with the sentencing guidelines, I am required to
16 consider what the guidelines recommend.

17 Here, Mr. Zhong pled guilty to wire fraud, so the
18 fraud guidelines thus apply. Because Mr. Zhong pled guilty to
19 a violation that has a statutory maximum sentence of 20 years'
20 imprisonment, the base offense level is seven. Because the
21 loss resulting from the offense exceeded \$550,000 but is less
22 than \$1.5 million, Mr. Zhong's offense level is increased by
23 14 levels. Mr. Zhong's offense level is reduced by three
24 levels for his acceptance of responsibility.

25 After application of all of the adjustments I have

N4e2ZhoS kjc

1 noted, his total offense level is 18.

2 As to criminal history, the defendant has a 2014
3 conviction for driving under the influence which results in
4 one criminal history point. He thus falls within criminal
5 history category I.

6 Offense level 18 at criminal history category I
7 results in a guidelines range of 27 to 33 months'
8 imprisonment.

9 Mr. Bachner, do you have any objections to the
10 accuracy of the guidelines calculations as I have reported
11 them?

12 MR. BACHNER: I do not, your Honor.

13 THE COURT: Does the government have any objection to
14 the accuracy of the guidelines calculations as I have reported
15 them.

16 MR. FELTON: No, your Honor.

17 THE COURT: Based upon my independent evaluation of
18 the sentencing guidelines, I find that the offense level is 18,
19 criminal history category is I, and the recommended sentencing
20 range is 27 to 33 months' imprisonment.

21 I will hear from you, Mr. Bachner, as to an
22 appropriate sentence.

23 MR. BACHNER: Thank you, your Honor.

24 Your Honor, we have done a little bit of division of
25 labor here. Mr. Garland is going to address the issues

N4e2ZhoS kjc

1 related to the facts of the -- underlying facts of the case,
2 and I'm going to address the 3553(a) categories, with your
3 Honor's permission.

4 THE COURT: All right. That's fine.

5 Mr. Garland.

6 MR. GARLAND: And does your Honor have any preference
7 as to whether we sit here or stand at the podium?

8 THE COURT: Wherever you are most comfortable.

9 MR. GARLAND: Thank you, your Honor.

10 In this case, there are very few areas of
11 disagreement between us and the government. These
12 disagreements are really only about characterization of the
13 facts and how those facts should impact a reasonable sentence
14 in this case, but not so much as to the facts themselves.
15 Those disagreements are limited.

16 I want to first focus on areas where there is
17 agreement with the government.

18 In September of 2012, at the age of 22, Jimmy Zhong
19 accidentally found, and intentionally exploited, a simple flaw
20 in the illegal Silk Road website. Jimmy stumbled onto that
21 flaw while withdrawing Bitcoin from the website. He
22 accidentally double clicked the withdrawal button and was
23 surprised to discover that it resulted in withdrawing double
24 the amount of Bitcoin.

25 Without extensive planning or effort, but over

N4e2ZhoS kjc

1 several hours of work spread out over a few days, he created
2 multiple user accounts, deposited Bitcoin, and then rapidly
3 clicked withdrawal. By doing so, Jimmy obtained 50,000
4 Bitcoin valued at the time of around \$620,000.

5 And to assess what Jimmy took back in 2012, it is
6 important to recognize what Bitcoin was at the time. It --
7 while it is a bridge too far to say it was like monopoly money
8 at the time, such a characterization doesn't miss the mark by
9 much. Jimmy and others around the world were creating Bitcoin
10 seemingly from thin air, mining them—i.e., creating them—with
11 nothing more than home computing equipment. At the time, it
12 didn't take the powerful server farms that it takes now to
13 mine and create Bitcoin. In 2012 Bitcoin was a little known,
14 little understood, uncertain, and speculative cryptocurrency.
15 Jimmy did not nor would anyone at the time have viewed Bitcoin
16 as comparable to U.S. currency.

17 Of course what Jimmy did was wrong, your Honor.
18 Jimmy recognized that he was taking something that at that
19 moment had significant value, and he recognizes he must be
20 punished for that, along with his other acts. He had no right
21 to take the Bitcoin from Silk Road and Ross Ulbricht; however,
22 it is equally true that Ulbricht only had possession of that
23 Bitcoin through ill-gotten means and had no right to possess
24 the Bitcoin in the first place. Silk Road and Ross Ulbricht
25 are not victims in the true sense of the words and did not

N4e2ZhoS kjc

1 truly suffer harm as a result of Jimmy's actions.

2 Jimmy, while concealing his control of the Bitcoin,
3 held onto most of that Bitcoin for almost a decade, around 96
4 percent, around 51,352 of the total 53,500 Silk Road Bitcoin.
5 He did not use any of it until 2017. And between 2017 and the
6 time of the seizure, Jimmy spent approximately or used or
7 dissipated approximately 4 percent of that Bitcoin on himself,
8 friends, and gifts, and some of it was in fact stolen from his
9 home.

10 Jimmy knows that holding onto and spending some of
11 that Bitcoin was wrong. It's part of what he must be punished
12 for. And he understands that the Bitcoin he dissipated, while
13 a small part of the overall amount of Bitcoin that the
14 government now has in its possession, was still significant,
15 worth around \$16 million at the time he dissipated it.
16 However, 96 percent of the Silk Road Bitcoin, along with other
17 Bitcoin, is under the government's control. The value of the
18 Bitcoin handed over to the government is staggering, worth
19 between 3.4 billion at the time of the seizure and 1.5 billion
20 as we sit here today in this courtroom, your Honor.

21 Much of the dissipated Bitcoin was converted into
22 assets that the government has under its control currently.
23 Of those \$16 million, Jimmy invested around 9.5 million in his
24 80 percent interest in RE&D Investments, a Memphis based
25 company with substantial real estate holdings in the millions

N4e2ZhoS kjc

1 of dollars. The government also recovered over \$600,000 in
2 cash and precious metals from Mr. Zhong's home.

3 The government seized the device that contained the
4 majority of the Bitcoin in this case, and once they did that,
5 Jimmy could no longer control that Bitcoin. However, neither
6 could the government. The government had no way to use that
7 device to control the Bitcoin without Mr. Zhong's cooperation.
8 Jimmy gave the government, with no promise of anything in
9 return, the keys and tools it needed to take control of
10 billions of dollars worth of Bitcoin—control the government
11 would not have been able to obtain without Jimmy's
12 cooperation.

13 As Jimmy has gone through the multistep process of
14 giving the government control of the Bitcoin, he has repeatedly
15 proven, through his actions, his good-faith desire to aid and
16 cooperate with the government. Jimmy decrypted the files
17 needed to access the Bitcoin, provided the government with the
18 private keys to the Bitcoin on the blockchain, provided copies
19 of Bitcoin wallets and the passwords to access those wallets.
20 He spent days and days over the course of weeks extracting
21 Bitcoin from lightening nodes. He identified Bitcoin in
22 interest bearing accounts online and he sent it to the
23 government and even gave the government control of around 14
24 Bitcoin unconnected to Silk Road worth around \$420,000 at
25 today's price of \$30,000 a Bitcoin.

N4e2ZhoS kjc

1 Jimmy knew then, and he knows now, that he committed
2 a crime when he took the Bitcoin, that he should not have kept
3 the Bitcoin all those years, and he should not have spent any
4 of it. He is remorseful what he did and understands he must
5 be punished.

6 And that's what we view as the heart of this case,
7 your Honor. And having covered that, I want to turn to some
8 of the areas where there is some agreement between us and the
9 government. And while I may spill many words and use a lot of
10 time to cover these disagreements, I do so only because some
11 of the issues are nuanced and hard to explain, and I ask that
12 your Honor keep in mind that the time I spend on them is not
13 commensurate with their importance in the case.

14 First, the defense and the government both agree that
15 Jimmy stopped the withdrawals at 50,000 Bitcoins, but there is
16 potentially slight disagreement as to why. The 50,000 Bitcoin
17 limit mentioned by Jimmy in his posts online and noted by the
18 government in their memo was simply a daily volume. Jimmy
19 could have continued the withdrawal for more days, even weeks,
20 until it was detected. Jimmy chose not to. This does not
21 excuse his behavior, but helps to put it into context.

22 Another point of disagreement is whether Jimmy and
23 Ulbricht, who ran the Silk Road, messaged each other after
24 Jimmy took the Bitcoins. After Jimmy took the Bitcoins from
25 Silk Road, Ross Ulbricht contacted him over the Silk Road

N4e2ZhoS kjc

1 messaging service and asked him to explain how he obtained the
2 Bitcoin. After Jimmy told him what he did, Ulbricht did not
3 ask Jimmy to return the coins. Rather, he thanked Jimmy for
4 his candor and sent him unsolicited additional Bitcoin.

5 The government notes that they were not able to find
6 these chats. However, the fact that the government could not
7 find them does not mean they didn't occur. Jimmy has been
8 clear from the first day we met him, your Honor, that these
9 chats occurred. He told us this, knowing the government had
10 the servers. He told us this fully expecting the government
11 to be able to corroborate the existence of these chats. The
12 government even acknowledged in their memo that there was a
13 message from an account Jimmy controlled that they could not
14 read. The government also does not know if those chats were
15 deleted or lost from the Silk Road servers between the time
16 they occurred in 2012 and the later point when the government
17 seized those servers. They had no control, visibility, or
18 ability to know what happened with the data in that time. And
19 further, the defense doesn't have access to those servers and
20 can't search them.

21 The defense also disagrees with the government's
22 characterization of Jimmy's efforts to conceal and control the
23 Silk Road Bitcoin. The government stated in their memo that
24 Jimmy used considerable technical skills to conceal and
25 benefit from this crime over nine years. However, the steps

N4e2ZhoS kjc

1 that Jimmy took to conceal his control over the Bitcoin were
2 neither particularly complex nor did they require considerable
3 technical skills. Jimmy created multiple user names on the
4 Silk Road to withdraw the Bitcoin. Like every other user of
5 the Silk Road, he did not use his true name for those user
6 names. He later sent a percentage of the original Bitcoin
7 through a Bitcoin mixer, an online program set up and
8 available with no input from Jimmy whatsoever that made those
9 750 Bitcoin he sent through it harder to trace back to Jimmy.

10 Jimmy also converted the Bitcoin Cash he received in
11 the 2017 Bitcoin Cash hard fork into Bitcoin, making that
12 Bitcoin generated in the conversion harder to trace back to
13 Jimmy. And while that conversion had the effect of
14 concealment, concealment was not the goal of the conversion.
15 Jimmy did it because he felt Bitcoin would be more valuable in
16 the long run than Bitcoin Cash.

17 Jimmy was right. That decision resulted in the
18 government recovering more value—in fact, tens of millions of
19 dollars more in value—than the government would have had
20 Jimmy not converted the Bitcoin Cash to Bitcoin.

21 It's also true that the inherent semi-anonymity of
22 Bitcoin helped to conceal Jimmy's control of the Bitcoin. Yet
23 that feature is built into Bitcoin, not one that Jimmy
24 created. The overwhelming majority of the Bitcoin sat on the
25 Bitcoin blockchain such that anyone could have traced it back

N4e2ZhoS kjc

1 to Silk Road with any of the many publicly available Web-based
2 blockchain explorers.

3 It is also important to note that Jimmy always
4 reported all Bitcoin sales, whether connected or unconnected
5 to the Silk Road, on his tax returns.

6 The government also accurately notes that Jimmy
7 waited around four months from the date of the search to turn
8 over control of the Bitcoin to the government. However, the
9 delay was not brought on by an unwillingness to cooperate as
10 the government suggests, but instead by multiple other
11 reasons.

12 Defense counsel needed time to do our job. We needed
13 to be able to give our client informed advice, and we needed
14 time to do that. The defense needed to hire its own forensic
15 expert to trace the Silk Road Bitcoin and separate it from
16 Bitcoin that Jimmy legitimately obtained from other sources.
17 No easy task. Defense counsel needed to research, given the
18 civil resolution of a similar case, whether a crime had even
19 been committed.

20 Further, not long after the search warrant was
21 executed at his home, Jimmy directed us to reach out to the
22 government to begin negotiating a resolution of this case.
23 However, the government, like the defense, also needed time to
24 get up to speed.

25 Once the government was ready to meet, the defense

N4e2ZhoS kjc

1 presented several strong legal and factual arguments to
2 mitigate Jimmy's culpability. Only a few days later, before
3 any decision was rendered by the government, Jimmy gave the
4 government control over the Silk Road-related Bitcoin as well
5 as other Bitcoin unrelated to Silk Road.

6 Another area of disagreement is the role the dramatic
7 financial benefit to the government should play in determining
8 an appropriate sentence. Again, the difference here is really
9 only one of emphasis, not of the facts.

10 In 2012, when Jimmy took the Bitcoin from Silk Road,
11 it had a value of around \$620,000 at that moment, a small
12 fraction of the value of the Bitcoin the government seized and
13 currently possesses. As I have said, on the day of the
14 seizure, the Bitcoin was worth around 3.39 billion, almost 5.5
15 thousand times more than when Jimmy took it from Silk Road in
16 2012. Today the Bitcoin is worth about 1.5 billion, over 2.5
17 thousand times more valuable than on the date Jimmy took it
18 from Silk Road.

19 There is no question that but for the government's
20 hard work and its investigation, there would be no financial
21 benefit to the government here. It is not solely attributable
22 to Jimmy's acts of taking and retaining the Bitcoin.

23 It wasn't until agents showed up at Jimmy's house to
24 search it that Jimmy was forced to really confront what he had
25 done. And the government also accurately notes that it would

N4e2ZhoS kjc

1 have -- that the financial benefit to the government would
2 have been larger had Jimmy not dissipated around \$16 million
3 worth of Bitcoin. It is undisputed that Jimmy substantially
4 benefited from his ill-gotten gains. However, we don't agree
5 that benefit is appropriately viewed as a loss to the
6 government. There would have been no benefit or one that was
7 substantially smaller had Jimmy not taken the Bitcoin from
8 Silk Road back in 2012. For instance, had Ulbricht dissipated
9 all 50,000 Bitcoin before the government seized the Silk Road
10 Bitcoin, the government would have received nothing from that
11 Bitcoin. And even assuming Ulbricht hadn't dissipated it, the
12 government would have sold that 50,000 Bitcoin at auction in
13 2014 for around 16.7 million. Instead of 16.7 million, the
14 government now has control over exponentially more value,
15 ranging from over 200 times more value based on the 3.39 value
16 at the time of the seizure or 92 times more value based on the
17 value of 1.5 billion today, an almost unfathomable increase in
18 value to the government.

19 Undoubtedly Jimmy derived a large financial benefit
20 from his wrongdoing. Undoubtedly he should be punished for
21 that. Yet it should not be ignored that Jimmy preserved and
22 grew the majority of what he obtained from Silk Road and the
23 U.S. government has obtained an enormous final benefit from
24 the return of that Bitcoin.

25 The government's right; we are asking the Court to

N4e2ZhoS kjc

1 take that financial benefit into consideration when fashioning
2 an appropriate sentence. However, it should also be
3 recognized that dramatic increase in value is not just a
4 benefit to Jimmy. Imagine, if you will, after 2012 if Bitcoin
5 had gone down to zero in the ensuing years. It is hard for me
6 to believe that we would be sitting here today if that had
7 happened. In this sense, this prosecution is in part because
8 of the dramatic rise in the value of Bitcoin. In this context
9 that we sit here in part because Bitcoin went up, it's
10 appropriate for the Court to take into consideration the
11 enormous financial benefit to the government brought in part
12 by Jimmy's acts of taking and retaining the Silk Road Bitcoin.

13 The defense and the government also disagree as to
14 the emphasis that should be placed on the harm caused to the
15 victim in this case. While there is no disagreement that the
16 harm is to Ulbricht, who only obtained control of the Bitcoin
17 by his criminal scheme for which he is serving two life
18 sentences plus 40 years, and we believe that the government
19 agrees with us that Ulbricht never had a right to possess that
20 Bitcoin, is not a victim in the traditional sense of the word.
21 While at one point in their memo the government laments that
22 it's become too easy for advanced computer savvy individuals
23 like Zhong to target and victimize holders of cryptocurrency
24 from behind computer screens, I can't really believe that the
25 government truly views Ulbricht as someone who has been

N4e2ZhoS kjc

1 victimized by Jimmy.

2 The only disagreement between us and the government
3 on this issue comes to our respective views on how the harm
4 impacts the appropriate sentence. The seriousness of Jimmy's
5 crime or any crime is deeply intertwined with the nature of
6 the harm that was caused. We raise this not to suggest that
7 it's okay to steal from criminals. It most certainly is not.
8 Jimmy deserves to be punished. However, it is also true that
9 the nature of the harm caused by Jimmy's crime must be taken
10 into consideration.

11 Here the harm that must be punished is of a
12 fundamentally different character than cases involving
13 innocent victims. No innocent investor was misled. No
14 innocent individual lost the fruits of his or her hard labor.
15 No retiree lost their nest egg. No family lost their ability
16 to pay their home mortgage. No parents lost their ability to
17 send their kids to school. Ulbricht's loss of his ill-gotten
18 gains to Bitcoin that he had no right to possess is just a
19 fundamentally different animal.

20 Still, Jimmy understands and fully appreciates what
21 he did was wrong. He has abandoned his naive belief that he
22 held so long that what he did was no big deal because of who
23 he took it from or what he took. He had no right to the
24 Bitcoin and will never again engage in any illegal conduct.

25 Thank you, your Honor.

N4e2ZhoS kjc

1 THE COURT: Thank you.

2 Mr. Bachner.

3 MR. BACHNER: Your Honor, this is a good segue to go
4 into from the factual information into kind of the background
5 of Mr. Zhong.

6 I just want to preface my remarks. I say this often
7 at sentencing, but I just think it is so appropriate. I have
8 been doing this for a long time. I think your Honor and I go
9 back a little bit from the days when you were in the U.S.
10 Attorney's office and I had been doing criminal defense work
11 for a bit and was a prosecutor for a while. I always remark
12 how hard it is when I was a prosecutor to do my job, how hard
13 it is as a defense lawyer, but whenever I am in front of you,
14 your Honor, or any other judge, frankly, in this district or
15 any other district, I'm always amazed that the difficulty that
16 a Court has, and the Court often struggles with coming up with
17 a fair sentence and trying to figure out, you know, what do
18 you do with the person has committed a crime standing before
19 you and trying to weigh the appropriate punishment that that
20 person should get, particularly defendants in criminal cases
21 who are just often probably some of the most vulnerable people
22 we have sitting there, you know, surrounded by your lawyers.
23 But it's a really -- it's a very vulnerable time for any
24 defendant, and it makes our job sometimes a little more
25 difficult, hoping that we are articulating the arguments in a

N4e2ZhoS kjc

1 way that we mean them, that we are not saying things in a way
2 that come across the wrong way, and trying to, you know,
3 educate the Court to who our client is aside from the person
4 who stole 620,000 Bitcoin from Mr. Ulbricht.

5 So what I want to do, your Honor, is discuss a little
6 bit with you why we believe, your Honor, that a variance in
7 the case to a term that does not include jail but does include
8 a significant portion of home confinement and other types of
9 considerations the Court may deem appropriate is the right way
10 to resolve this case.

11 As Mr. Garland said, there are some disputes that we
12 have with the government, who parenthetically has been a
13 professional pleasure to deal with in this case. But it is
14 important, your Honor, for us to be able to say that although
15 we have some disagreements, we all agree a variance is
16 appropriate. It is just how much. The probation department
17 has indicated that a three-month variance is appropriate,
18 Mr. Felton has agreed that a variance is appropriate, and we
19 agree a variance is appropriate.

20 The question for the Court is whether or not a
21 variance from the 27 months down to a period that does not
22 include jail for a gentleman like Mr. Zhong is a reasonable
23 resolution of the case, given the facts which I would like to
24 discuss with the Court.

25 So, your Honor, the first criteria that you have to

N4e2ZhoS kjc

1 look at under the guidelines is what is the history and
2 characteristics of the defendant as well as the nature and
3 circumstances of the offense. Mr. Garland has taken the first
4 part off my plate, that is, the nature and circumstances of
5 the offense. And we all know, your Honor, the wonderful words
6 of Judge Rakoff, who I put in every memo I ever file in this
7 court because I think it is just so emblem -- it is just the
8 emblem of what I think the Court should be thinking of at the
9 time of sentence, and I'm going to take ten seconds and read
10 it, Judge.

11 Judge Rakoff said: "Surely if ever a man is to
12 receive credit for the good he has done and his immediate
13 misconduct assessed in the context of his overall life
14 hitherto, it should be at the moment of his sentencing, when
15 his very future hangs in the balance. This elementary
16 principle of weighing the good with the bad, which is basic to
17 all the great religions, philosophies, and systems of justice,
18 was plainly part of what Congress had in mind when it directed
19 courts to consider as a necessary sentencing factor the
20 history and characteristics of the defendant."

21 So in plain English, your Honor, every offender
22 deserves an individual assessment for his conduct, who he is,
23 and how do the scales of justice bear down on that defendant?

24 This Court has had people before it who have plain
25 and simply demonstrated through past conduct that they are not

N4e2ZhoS kjc

1 very nice people. They have done a lot of bad stuff. And
2 even they may have some redeeming situations about them. But
3 they have demonstrated through their conduct that they got a
4 lot of chances in life and they haven't taken advantage of
5 them.

6 And there are some defendants who have committed the
7 same crime but who are not fundamentally bad people, who are
8 fundamentally good people who have also committed what is a
9 crime, and oftentimes the same one.

10 The issue becomes how do we treat these two different
11 people?

12 Jimmy Zhong, your Honor, I submit respectfully to
13 this Court is fundamentally a nice, kind, good guy. And we
14 were able to submit a bunch of letters from friends who have
15 known him for a while, and they all kind of mirror the same he
16 is a nice, kind guy, he helps people who are in some type of
17 problems, whether it is helping them up the steps or helping
18 them fix something, just his nature of being a kind person.

19 So Judge, in imposing the sentence on Mr. Zhong, the
20 parsimony clause rules the day. It is the overarching
21 principle, and your Honor is directed -- I'm sorry to be
22 telling you these things that are obvious to the Court, but I
23 did want to put them out there, sufficient but not greater
24 than necessary to meet the goals of sentencing.

25 I have always looked at that, your Honor, as meaning

N4e2ZhoS kjc

1 what is the lowest sentence a Court can impose to meet the
2 goals of sentencing? What is sufficient but not greater than
3 necessary? And I submit, your Honor, in a case like this, and
4 given Mr. Zhong's background, that a variance to a period that
5 does not include prison but does include a period of
6 significant home confinement meets those goals.

7 So, your Honor, let's talk a little bit about who
8 Jimmy Zhong is.

9 Jimmy is the son of two Chinese immigrants who came
10 to this country and they dedicated themselves to working only
11 and ignoring Jimmy wholly. Jimmy's dad owned a used goods
12 store. His mother was a nurse who worked at night. And from
13 childhood, Jimmy was left to fend for himself. He never had a
14 single relationship with his parents. He had no relationship
15 with his sister. And as long as he can remember, your Honor,
16 his home life was devoid entirely of any segment of love,
17 totally ignored. Jimmy, your Honor, was kind of like a piece
18 of furniture in the home. He was attended to when necessary
19 and otherwise ignored. There was no parental care, and he was
20 utterly devoid of any attention.

21 When he was interviewed by the psychiatrist and we
22 had met with the government, he characterized his life as just
23 utterly miserable. And what a sad thing for a person to look
24 back at his childhood and say that my life was miserable.
25 What a sad thing for someone to say.

N4e2ZhoS kjc

1 His parents, your Honor, got divorced. He doesn't
2 even know when that happened because he could have cared less.
3 He had no relationship with either of them. And I put in the
4 memo that usually the divorce of a parent is such a
5 monumentally significant issue that people remember that. It
6 impacts them until the day they die. Jimmy didn't even know
7 when it happened and it had no impact on him at all because
8 these were two strangers essentially to Jimmy.

9 His father gave no financial support when he left.
10 And when his father died, Jimmy didn't even know. He found
11 out about it just as a matter of, like, just hearing about it.
12 That is just the nature of the relationship that he had with
13 his parents.

14 His mother and sister don't even know he is being
15 prosecuted in this case to our knowledge.

16 And the school life, your Honor, was an extension of
17 that family misery. Like his parents, who had no friends and
18 no social life, neither did Jimmy and he developed as a result
19 of what he learned at home or didn't learn at home, no social
20 skills. He was victimized, your Honor, almost on a daily
21 basis at school. He was bullied from grade school through
22 high school. And now, your Honor, we live in a world where
23 people take bullying of children a lot more seriously than I
24 think they did maybe ten or 15 years ago, and he suffered
25 enormously from it. He was continuously punched and assaulted

N4e2ZhoS kjc

1 almost on a daily basis, and he was ridiculed and humiliated
2 publicly in high school because he was different. In his own
3 words, they said I was fat, they said I was ugly, they said I
4 was weird. And they never let him forget it for a day one --
5 for a day. He had no one to talk to—no parent to confide in,
6 no friend to escape to—all the time, your Honor, either
7 suffering from undiagnosed autism spectrum disorder or
8 developing that spectrum disorder as a result of the conduct
9 that he went through.

10 That type of impact and that type of torment takes
11 its toll, your Honor. It impacts your behavior and it impacts
12 your judgment and it impacted his. Those early experiences
13 never left Jimmy, and it shaped how he dealt with people. His
14 extraordinary need to be loved, his extraordinary need to be
15 liked, for any semblance of attention from anyone.

16 And in a letter written to the Court on Jimmy's
17 behalf, your Honor, one woman wrote, "All he wants in this life
18 is to love others and for others to love him. That's all he
19 was ever really looking for."

20 Dr. Norman, who wrote his report on Jimmy, said that
21 the autism spectrum disorder would make certain social
22 decisions difficult for Mr. Zhong. This difficulty would
23 include making decisions to try and change his social
24 relationships with others in a nontypical way. That is, he
25 has impairments in initiating and maintaining social

N4e2ZhoS kjc

1 relationships in a normal way. For example, giving away large
2 sums of Bitcoin and possessing large sums of cash were an
3 attempt, albeit atypical, of a way to gain social relatedness.
4 These behaviors are not as much conscious intention on
5 Mr. Zhong's part, but more of a lack of such development
6 consistent with his illness.

7 Jimmy accepts responsibility for what he did. He
8 knows he shouldn't have taken those coins and he's not trying
9 to shift the blame because he suffers from an autism spectrum
10 disorder. But it impacted the way he behaved. It impacted
11 his need to be accepted, and it impacted why he gave away
12 millions of dollars of Bitcoin to friends, to people, to women
13 trying to develop relationships, paying people's gambling
14 debts, buying women Jimmy Choo shoes and Chanel bags. These
15 types of what Mr. Felton probably correctly characterized as
16 decadent expenses, because in a lot of ways they are, they
17 weren't for Jimmy. They were for Jimmy to get acceptance and
18 have friendships. But what for Jimmy was, he bought himself a
19 2008 Lamborghini which crashed, and then he replaced it with
20 insurance money, and he bought a Tesla which cost more than the
21 Lamborghini. He bought himself a fake Rolex on Silk Road.

22 Jimmy lives in a very modest home in Gainesville, very
23 modest. Some people would characterize it as less than
24 modest. He is not somebody, your Honor, even though he spent
25 the \$16 million -- and, again, we don't minimize, and your

N4e2ZhoS kjc

1 Honor knows me well enough to know I wouldn't do that to the
2 Court, but at the end of the day, your Honor, this was not --
3 virtually everything Jimmy did, without justifying the
4 conduct, was for the reasons I articulated, and that is, the
5 background he had, the family upbringing he had, the disorder
6 he suffered from, all impaired that judgment, not that he
7 didn't know right from wrong, he knew right from wrong, but
8 how he acted.

9 So, your Honor, that is the young man seated before
10 you who, at the age of 22, in college, when people in college
11 do a lot of stupid stuff, and this was certainly more stupid
12 than what a lot of college people do, he made his friend with
13 the computer, and that's how he mined all that Bitcoin. And
14 everything he couldn't get at home, he would lock himself in
15 his room and just became enamored with the computer, and
16 that's where he got his solace, and that's where he got his
17 joy.

18 So your Honor, in imposing sentence, your Honor
19 should be considering what the goals of sentencing are.
20 Lawyers call it specific deterrence, number one, that is, what
21 type of sentence should your Honor be imposing to make sure
22 that Jimmy Zhong doesn't break the law again? If your Honor
23 imposes a sentence that includes jail, we would hope with some
24 type of variance, is that any different -- is the 24 months or
25 the 27 months necessary to send that message as compared to a

N4e2ZhoS kjc

1 probationary sentence for Mr. Zhong to specifically deter him
2 from committing a crime?

3 Mr. Zhong is an emotional wreck as a result of his
4 conduct, as a result of his arrest, as a result of his
5 prosecution, as a result of the attention that it has
6 garnered. His life has become rather public in many ways.
7 His friends are concerned because their lives have become
8 public as a result of what Mr. Zhong did.

9 And he would never, your Honor -- to the extent that
10 we have to take bets and courts oftentimes just make educated
11 guesses about the likelihood of someone recidivating and doing
12 something again, I think Jimmy is a really good bet, Judge,
13 that he is not going to break the law again. We can't
14 guarantee what's going to happen in life, Judge, but I believe,
15 respectfully, that Jimmy Zhong has really learned his lesson
16 and he is not going to be engaging in any type of criminal
17 conduct again.

18 And it is important to note the conduct he engaged in
19 was all related to this Bitcoin stuff. That's no longer in
20 his world. He now has a company where he develops machine
21 parts. He is doing, actually, very well. He's got contracts.
22 He has people working for him. Yesterday one of the gentlemen
23 who has a contract with learned that Jimmy was getting
24 sentenced and said could you please tell the Court that it's
25 going to mess up my contracts? So I told Mr. Zhong I would

N4e2ZhoS kjc

1 tell that to the Court. That's kind of -- he has those
2 contracts. He is doing well. It's a 3D machine. They make 3D
3 mechanical parts for gears for factories, and he has a real
4 good skill at that. And that's where he has been spending his
5 time right now, your Honor.

6 So I specifically -- I respectfully submit, your
7 Honor, you shouldn't have to have an enormous concern that
8 Mr. Zhong -- you should have very little concern that
9 Mr. Zhong will commit a crime again.

10 In Mr. Felton's memo, your Honor, he focused on
11 specific deterrence and on general deterrence. I think we all
12 agree there is no need to rehabilitate Mr. Zhong as a goal of
13 sentencing, and I think we all agree there is no reason to
14 punish him for punishment's sake alone. There is no reason to
15 incarcerate him to just punish him for what he's done.

16 I think, your Honor that, it should be -- I think we
17 all agree we are talking about specific deterrence and I don't
18 know what the Court is thinking, but as far as how counsel
19 perceives the case, we are looking at specific deterrence and
20 we are looking at general deterrence.

21 So, your Honor, if you talk about general deterrence
22 and incarceration, one of the statistics I always found kind
23 of remarkable, your Honor, is that -- it's changed a little in
24 2021, but prior to 2021, the United States of America, Judge,
25 had 4 percent of the world's population and 25 percent of the

N4e2ZhoS kjc

1 word's incarcerated population, ahead of China. We were
2 number one on the list. The United States of America put more
3 people in jail than any country in the world.

4 In 2021, that changed because of the First Step Act
5 and because of the recognition by Congress and by the Courts
6 that we are putting too many people in jail, and we released a
7 lot of people from what were minor narcotics matters and the
8 recognition that probationary sentences and nonincarceratory
9 sentences can make sense. They do punish people.

10 People who think probation doesn't mean anything,
11 it's a slap on the wrist, have never been on probation. It is
12 a very strictly monitored procedure. You can't travel. You
13 can't do certain things. This is not like -- the one Second
14 Circuit case referred to it as conditional liberty. You know,
15 you are on liberty, but it is no party.

16 And putting a fellow like Mr. Zhong on probation is a
17 restriction, particularly if there is home confinement
18 attached, your Honor, is a significant punishment, your Honor.
19 It's not a slap on the wrist for what Mr. Zhong has done.

20 And your Honor, you know, you are aware that the 2023
21 guidelines have come out. They don't take effect until
22 November. Mr. Zhong would -- you know, under the new
23 guidelines, there is a recognition that if you fall in
24 particular zones, and even a zone D case under particular
25 circumstances, Congress is now saying to the judges that

N4e2ZhoS kjc

1 nonincarceratory sentences should be considered in a very
2 significant way because of the recognition that too many
3 people are going to jail who don't necessarily have to be
4 there.

5 And it's expensive. It costs \$40,000 a year at least
6 to incarcerate the defendant. It costs \$4,000 a year to put
7 them on probation. And there are cases, your Honor, I have
8 cited them, one case who cites that fact about something the
9 Court should consider, the financial cost for particular
10 defendants who either it's a close call or not such a close
11 call, but whether Jimmy Zhong has to be someone who has to go
12 to jail and whether that type of expense in addition should be
13 attached to it.

14 Your Honor, the Supreme Court in *Gall* was very, very
15 clear that probationers -- that offenders on probation, the
16 Supreme Court says, are nonetheless subject to several
17 standard conditions that substantially restrict their liberty.
18 They may not leave the judicial district, etc. And in the
19 *Gall* case, the Court upheld a probationary sentence for a
20 defendant who is looking at a fairly substantial guideline
21 level.

22 Now, your Honor, as far as general deterrence, again,
23 I don't think, your Honor, that someone who is inclined --
24 first of all, this case is so unique on its facts, you know,
25 who Mr. Zhong took the coins from, the circumstances of how he

N4e2ZhoS kjc

1 took them, that is, the impulsive nature of how it occurred,
2 the serendipitous nature of how it occurred, I don't think
3 that the same type of concerns that Mr. Felton has voiced
4 about general deterrence really have that same type of
5 applicability to this type of case, that someone is sitting
6 back saying oh, geez, if for some reason I am able to get
7 ahold of some coins that I shouldn't have gotten ahold of, you
8 know, look what's going to happen.

9 I think people inclined to commit those types of
10 predatory offenses don't have the same deterrent issue that we
11 have in a case like this. And I don't think that there is a
12 general -- the general deterrent aspect of this case I just
13 don't think is that controlling in a case like this. It
14 surely must be considered by your Honor. I just don't think
15 it should really be -- it should really have to be the
16 controlling factor in this type of case.

17 So your Honor, we also have somewhat of a concern
18 here, Mr. Zhong's emotional condition as a result of his
19 disorder. We have -- counsel has, and we ask the Court to
20 consider this, some type of concern about just how he is going
21 to do in jail. How is he going -- how is that emotional
22 situation going to interact, you know, with other inmates,
23 with the rules in the jail? His view of how he deals with
24 people is just considerably different than how others -- he is
25 a nice guy, he is a lovely guy, he is a sweet guy, and we just

N4e2ZhoS kjc

1 have concerns about how he will fit in, to be very candid with
2 the Court.

3 That is why, your Honor, we believe strongly, in a
4 case like this, despite the serious nature of this offense—and
5 we don't minimize it and Jimmy did doesn't minimize it—that
6 the goals of sentencing, your Honor, would be met by imposing
7 a sentence that punishes Jimmy for what he did and takes into
8 consideration, we ask the Court, in a creative way, that this
9 was a fairly unique type of case. And your Honor is aware of
10 the sentences imposed in this district in cases which I would
11 argue to the Court are substantially more serious, meaning
12 that the victims were victims of investor fraud, market
13 manipulation, theft, where there have been substantial,
14 substantial departures from hundreds of months to 18 to 24
15 months, the same type of range that Mr. Zhong looks at now
16 starting.

17 We ask the Court, your Honor, to impose a sentence on
18 him, again, that will allow him to continue with his life,
19 continue with his work, continue with the company he has now
20 started up, and allow him the benefit, your Honor, of
21 remaining as productive as possible among us.

22 And last, Judge, and Mr. Zhong is going to say this
23 to you, the closest thing he has in the world to him is his
24 dog Chad. I'm not a dog owner, and I'm not an animal owner,
25 but I know to people who do own animals, they are oftentimes

N4e2ZhoS kjc

1 like their children. Chad is sick, has a feeding tube right
2 now. And I don't mean to minimize or -- the fact of the
3 matter is, Mr. Zhong takes care of this dog. I mean, he has
4 someone he took over to the house now to watch the dog. And
5 when you speak to him, one of his greatest concerns is, you
6 know, who is going to take care of Chad?

7 So I understand, your Honor, that when you sentence
8 people there are people with family members who are sick, I
9 get it, but this is a family member to him, your Honor, and I
10 thought it was appropriate to at least let your Honor know
11 what -- kind of what his concerns are, as well.

12 So anyway, Judge, I thank you so much for listening
13 to the argument. I hope I have been persuasive in -- with the
14 Court in helping to appreciate the kind of person Jimmy is,
15 the circumstances that he had, and I am hopeful, your Honor,
16 that you agree with counsel that this is one of those cases
17 where varying from 27 months to a term of probation and home
18 confinement is within the appropriate sentencing discretion
19 your Honor has and is consistent with the parsimony clause of
20 imposing a sentence that is sufficient but not greater than
21 necessary to meet the goals of sentencing.

22 Thank you.

23 THE COURT: Mr. Zhong, is there anything you wish to
24 say before the Court imposes sentence?

25 THE DEFENDANT: Your Honor, it is very difficult for

N4e2ZhoS kjc

1 me to speak here in front of you in this open court. I am by
2 nature extremely uncomfortable in my own skin.

3 I am here, I am here today with the absolute shame
4 and remorse for my conduct. With your permission, I want to
5 apologize to the U.S. government and everyone involved for all
6 the hard work they put in to make me to do the right thing,
7 and thank the prosecution, the F.B.I., the IRS for the
8 professional way they have treated me in the investigation.

9 Your Honor, as my attorney said, over ten years ago
10 when I discovered a flaw in the Silk Road platform, Bitcoin
11 itself was only a little over two years old. No one really
12 knew what it was or was going to be. When I stole the 50,000
13 Bitcoin from Silk Road, I knew what I did was wrong but I
14 justified my actions to myself thinking that Ross Ulbricht
15 committed crime to get the Bitcoin, so it was okay for me to
16 take some from him. I thought that since Ulbricht contacted
17 me and thanked me for explaining the flaw to him and by
18 sending me more Bitcoin, it was okay. However, I now clearly
19 see those are all just justifications to protect myself. I
20 should have recognized seriousness of stealing the Bitcoins
21 when I took them.

22 I can't blame my choices on my youth at the time I
23 took them because I didn't just take them. I kept most of the
24 Bitcoins for almost a decade as their value soared beyond what
25 I ever expected, into the billions. I knew that holding onto

N4e2ZhoS kjc

1 the coins was wrong. I should not have spent any of it. I
2 should have spoken to an attorney and figured out how to
3 handle it, but I did not. I think I buried my head in the
4 sand because just having the coins made me feel important and
5 worth something.

6 Over 2,000 Bitcoin, worth millions of dollars at the
7 time, are now gone because I spent them, gave them away, or
8 they were stolen from my house. The vast majority of what I
9 spent was on friends and in unsuccessful attempts at forming
10 relationship. Even the items I bought for myself were an
11 attempt to impress people. Few people ever cared about me
12 before I was able to buy things for them. That was my mindset
13 at the time. It was wrong of me. I should not have done
14 anything with them or even possessed them so that they could
15 be stolen because they were not mine.

16 I am lucky that several college friends have stuck by
17 me through this, and I want to apologize to them for the
18 scrutiny I put them under by the government and the media.

19 Your Honor, right now the dearest, closest thing that
20 I have to me is my dog Chad. He is the only one in my life
21 that's always been there for me. Now he is old and sick, and
22 he has a feeding tube. I care for him above all else. I have
23 no one else to take care of him for me. I know it may seem
24 odd at this time, but I ask you to please consider him as well
25 in whatever sentence you may impose.

N4e2ZhoS kjc

1 Your Honor, your Honor, I always knew that what I did
2 was wrong. I never forced myself to wrestle with the truth of
3 how serious it was. It wasn't until agents showed up at my
4 house to search that I was forced to confront the gravity of
5 my actions. Not a day goes by I don't think about the crime I
6 committed, choices I made, how I deceived myself into thinking
7 it was all okay when it was not. I am the only one
8 responsible for where I am now. I now accept that I must be
9 punished.

10 I know I cannot change the past, but I commit to
11 everyone that I will never break the law again. I will live a
12 law-abiding life, as I am now, running my CNC machining
13 business that continues to grow.

14 Your Honor, I know my conduct in this case is not a
15 reflection of the man I am. I beg you to have faith in me.

16 Thank you for providing me a chance to speak on my
17 behalf.

18 THE COURT: I will hear from the government.

19 MR. FELTON: Thank you, your Honor.

20 As the Court knows, we are seeking a custodial
21 sentence here; but, largely due to the defendant's assistance
22 in accessing his crime proceeds, we are seeking a sentence
23 that is below probation's recommended sentence of 24 months.

24 I am not going to repeat everything in our lengthy
25 sentencing submission, your Honor. I am just going to try and

N4e2ZhoS kjc

1 point out a few different things as the Court considers the
2 3553(a) factors here, and of course I will answer any
3 questions that the Court has.

4 On the offense conduct here, this wasn't just a
5 one-time mistake. The defendant made not one bad decision,
6 but a host of bad decisions over a nearly ten-year period.
7 Between the 2012 wire fraud and the time of the November 2021
8 search, the defendant masterfully concealed what he had done
9 and where his Bitcoin came from.

10 We do disagree with defense counsel that the
11 concealment of the offense in the years after the wire fraud
12 was quite complex. To frustrate law enforcement tracing
13 efforts, he used a decentralized Bitcoin mixer, he used an
14 overseas cryptocurrency exchange when he converted the Bitcoin
15 Cash to Bitcoin. That was intentional. He was untruthful to
16 a domestic cryptocurrency exchange about where some of his
17 holdings came from, falsely claiming that those were trading
18 profits and Bitcoin that he had personally mined when they
19 actually came from the Silk Road. And he used an impressive
20 array of technological tools, including virtual private
21 networks, virtual private servers, virtual machines, and all
22 other kinds of state-of-the-art tools that he bragged about on
23 message boards to keep his identity a secret. And while we
24 disagree with defense counsel on this point, I do want to note
25 parenthetically, along the lines of what defense counsel have

N4e2ZhoS kjc

1 said, they have been a class act and a true pleasure to deal
2 with in this case.

3 So this wasn't a one-time laps in judgment. Day in
4 and day out, particularly from August 2017 until the search in
5 November of 2021, he made a conscious and deliberate choice to
6 benefit from his crime. The original wire fraud as well as
7 the more sophisticated laundering conduct over the following
8 nine plus years was designed to evade detection.

9 Another factor that in our view warrants jail time is
10 the 4 percent of the crime proceeds that he dissipated. And
11 while 4 percent may not sound like a lot, in a case involving
12 3.4 billion dollars of crime proceeds, of course that's quite
13 a significant amount. He used those on lavish expenses for
14 himself and for others. I won't go through all the expenses
15 that I chronicled in the sentencing submission, but we note
16 there that over the four plus years before the search, he used
17 crime proceeds on \$9.5 million in real estate investments,
18 hundreds of thousands of dollars to yacht and private jet
19 companies, tens of thousands of dollars at the Plaza, Four
20 Seasons, Ritz Carlton, Waldorf Astoria, he stayed at Regis
21 Hotels, and some of the luxury brands, like Louis Vuitton,
22 that we mentioned and heard about earlier today.

23 While the defendant was young at the time of the
24 fraud, as he grew older, he didn't do anything to rectify his
25 crime. His spending only escalated over time up until the

N4e2ZhoS kjc

1 search. And of course, based on the price of Bitcoin the day
2 of the search, the 2,149 Bitcoin approximately that the
3 defendant dissipated, that would have been valued at over \$142
4 million, and a \$142 million crime is a very significant crime,
5 your Honor. Even today based on the price of Bitcoin the
6 dissipated proceeds are worth a little over \$65 million at last
7 check.

8 With regards to the technical assistance, I want to
9 be clear, he deserves real and substantial credit for this.
10 That's why we exercised our discretion to allow him to plead
11 guilty to wire fraud and not money laundering and that's the
12 main reason why we are seeking the sentence below the
13 guidelines and even below probation's recommendation.

14 That said, he didn't voluntarily turn the Bitcoin
15 over to law enforcement. Law enforcement found it and seized
16 it pursuant to court-ordered search warrants. The day of the
17 search, the defendant provided zero assistance. And by the
18 time he ultimately relinquished all of the information needed
19 to fully control the Bitcoin, months after the search, he did
20 so only once he knew that he almost certainly would never be
21 able to control it himself again or access it.

22 Had law enforcement not tracked down Zhong and his
23 billions of dollars of crime proceeds we wouldn't be here
24 today. There is no indication that his pre-search behavior
25 would have changed absent these law enforcement efforts. He

N4e2ZhoS kjc

1 might still be pending his crime proceeds on yachts and
2 private jets, still using decentralized Bitcoin mixers and
3 overseas exchanges before stealthily introducing his crime
4 proceeds into the banking system and economy and keeping the
5 rest, until he needed it, inside that popcorn tin.

6 He was nearly flawless in concealing his crime for
7 over nine years. One of his very few mistakes involved a
8 microscopic portion of the crime proceeds. Less than
9 one-tenth of a single Bitcoin in 2019 the defendant moved to
10 an address that law enforcement knew he controlled. We are
11 talking about hundreds of dollars worth of Bitcoin in a
12 multibillion dollar case. Had he not done that, we might not
13 be here today.

14 On deterrence, your Honor, we think both specific and
15 general deterrence are factors here. I think we emphasize
16 general deterrence a little more.

17 On specific deterrence, again, he masterfully hid
18 what he did for over nine years. Despite having in-demand
19 skills, he didn't work. He lived an elaborate lifestyle, at
20 least had elaborate spending habits, and he boasted about it.
21 He didn't express any remorse for what he did, for spending
22 over \$16 million of crime proceeds until he was caught and we
23 know he has done so today, but he didn't until he was caught.

24 On general deterrence, your Honor, we think this is a
25 compelling factor that warrants imprisonment. After the fact

N4e2ZhoS kjc

1 even the most complex cases can look pretty simple. But
2 figuring out who was responsible for this offense and who
3 controlled the crime proceeds here was anything but. This is
4 extremely difficult and costly to detect. When someone
5 obtains cryptocurrency that belongs to someone else,
6 regardless of who they are, especially on this scale, with
7 years of concealment and extensive spending, that conduct, in
8 the government's view, respectfully, ought to be severely
9 punished at least with some term of imprisonment in order to
10 discourage others who are tempted to commit similar crimes.
11 We otherwise risk people taking a look at the facts of a case
12 such as this and saying, I will continue to commit cyber
13 frauds, I will continue a scheme to obtain a large amount of
14 cryptocurrency, continue spending millions of dollars on
15 luxury items, and if I get caught, well, I guess I will just
16 have to give back whatever I haven't spent and I will just get
17 probation and say I won't do it again. Respectfully, your
18 Honor, imprisonment is warranted here for general deterrence
19 reasons.

20 At the end of the day, the defendant committed a
21 cyber robbery of someone who he was purchasing drugs from,
22 spent over \$16 million of these crime proceeds, deprived the
23 government of crime proceeds that it was entitled to, that
24 would have been valued at over \$142 million at the time they
25 would have been seized, and the defendant used his vast

N4e2ZhoS kjc

1 technical skills to conceal and benefit from this crime for
2 nearly a decade.

3 On this record, this conduct, even with the
4 substantial mitigating factors that are present that we
5 acknowledge and that we considered, we think this conduct
6 warrants a jail sentence.

7 Thank you.

8 MR. GARLAND: Your Honor, may I take a brief second?

9 THE COURT: Sure.

10 MR. GARLAND: If I didn't make it clear in my original
11 presentation, of that \$16 million, around 9.5 million was spent
12 on his 80 percent interest in RE&D Investments which has
13 substantial real estate holdings in Memphis worth millions of
14 dollars that the government has under their control.

15 THE COURT: Okay.

16 MR. GARLAND: Thank you, your Honor.

17 THE COURT: In deciding upon an appropriate sentence,
18 I have considered all of the factors listed in Title 18 United
19 States Code § 3553(a), including the nature and circumstances
20 of Mr. Zhong's offense, his personal history and
21 characteristics, the need for the sentence imposed to reflect
22 the seriousness of the offense, the need to promote respect
23 for the law, to provide just punishment, and to afford
24 adequate deterrence, both specific and general.

25 As to the nature and circumstances of the offense,

N4e2ZhoS kjc

1 Silk Road was an online dark web black market created by Ross
2 Ulbricht, and it was operated by him from approximately 2011
3 until 2013. Silk Road allowed its hundreds of thousands of
4 users to buy and sell illegal drugs along with other illicit
5 goods and services online and anonymously. The only form of
6 payment accepted on Silk Road was Bitcoin, which is a digital
7 cryptocurrency.

8 In order to make purchases and sales on Silk Road,
9 users were required to maintain a Bitcoin address associated
10 with a user's account. These addresses were stored on wallets
11 maintained on computer servers controlled by Silk Road. To
12 purchase any of the drugs or other products sold on Silk Road,
13 users had to fund their wallets with Bitcoin; and after making
14 a purchase, Silk Road would hold the appropriate quantity of
15 Bitcoin in escrow, pending the completion of the transaction,
16 at which point the Bitcoin would transfer to the seller's
17 wallet.

18 Accordingly, Silk Road's payment system required
19 Silk Road to hold large quantities of Bitcoin on its servers
20 at any given time. Silk Road was operated on the Tor network
21 and used Bitcoin tumblers, a process involving the creation of
22 randomized dummy transactions to facilitate user anonymity and
23 evade law enforcement.

24 Between 2011 and he 2013, more than 1 1/2 million
25 illicit transactions took place over Silk Road involving 9.9

N4e2ZhoS kjc

1 million Bitcoin. These transactions earned Ulbricht and
2 Silk Road commissions of approximately 640,000 Bitcoin.

3 Ulbricht was identified and arrested in October 2013.
4 He was convicted at trial in February 2015 of, among other
5 things, distributing narcotics over the Internet, operating a
6 continuing criminal enterprise, and conspiracy to commit money
7 laundering. As we have heard, he was sentenced to life
8 imprisonment without the prospect of parole in May of 2015.
9 Judge Forrest, who was the presiding judge in that case, also
10 ordered forfeiture of all funds that had passed through
11 Silk Road.

12 Mr. Zhong became familiar with Silk Road through his
13 purchases of small amounts of cocaine on the site for his
14 personal use. At some point in or around September 2012,
15 prior to Ulbricht's arrest, Mr. Zhong had accidentally
16 discovered a glitch in Silk Road's payment transaction system.
17 He was withdrawing Bitcoin from the Silk Road system and
18 accidentally double clicked during that process. As a result
19 of double clicking at that moment, he received twice the
20 amount of Bitcoin that he had been anticipating.

21 In late September 2012, Mr. Zhong decided to exploit
22 this glitch in the Silk Road system. He created nine
23 accounts on Silk Road in late September 2012 and funded them
24 with between 200 and 2,000 Bitcoin. Shortly after making the
25 deposits, he then quickly effectuated numerous withdrawals of

N4e2ZhoS kjc

1 Bitcoin, and the accounts he created were each credited with a
2 multiple of his original deposit.

3 Over a period of a few days, Mr. Zhong stole
4 approximately 50,000 Bitcoin. At that time, the 50,000
5 Bitcoin had a value of about \$620,000. After acquiring the
6 50,000 Bitcoin, Mr. Zhong did not further victimize the site,
7 nor did he spend the Bitcoin. Instead, he periodically
8 transferred the stolen Bitcoin to different Bitcoin addresses
9 and he took steps to disguise and conceal his possession of
10 it.

11 As a result of his possession of the 50,000 stolen
12 Bitcoin, in August 2017, Mr. Zhong received a matching
13 quantity of a related cryptocurrency, 50,000 Bitcoin Cash, in
14 what is referred to as a "hard fork coin split." Believing
15 that Bitcoin was a better investment than the new Bitcoin Cash
16 Cash, Mr. Zhong later exchanged the 50,000 Bitcoin Cash for
17 3500 Bitcoin.

18 As we have heard, the value of Bitcoin experienced a
19 meteoric rise between 2012 and 2021. After Ulbricht's arrest,
20 the government began intensive research into the records of
21 Silk Road. In 2019, investors focused on the whereabouts of a
22 missing 53,500 Bitcoin. This 53,500 Bitcoin was "directly
23 forfeitable property that was involved in or traceable to
24 Ulbricht's crimes," citing the presentence report at paragraph
25 24.

N4e2ZhoS kjc

1 The government's investigation ultimately led to the
2 issuance of a search warrant for Mr. Zhong's home on November
3 9, 2021. In executing the search warrant, agents seized
4 approximately 50,491 Bitcoin traceable to Ulbricht's crimes
5 from Mr. Zhong's home valued on that day at approximately 3.35
6 billion. Ledgers recovered from Mr. Zhong's home also
7 indicate that he "pushed some of" the approximately 50,000
8 fraudulently obtained Bitcoin "through a decentralized Bitcoin
9 mixer" which is a computerized service used to conceal the
10 ownership of Bitcoin, citing the presentence report, paragraph
11 50 and note 2.

12 In March and May of 2022, Mr. Zhong voluntarily
13 surrendered to the government an additional more than 860
14 Bitcoin he had stolen from Silk Road in September of 2012.
15 The government estimates that Mr. Zhong preserved
16 approximately 96 percent of the Bitcoin he had stolen from
17 Silk Road. In addition to the Bitcoin, agents recovered
18 \$661,900 in cash from Mr. Zhong's home along with other
19 cryptocurrency as well as gold and silver bars.

20 In April and June 2022, Mr. Zhong also surrendered to
21 the government more than 142 additional Bitcoin not traceable
22 to Silk Road. As to Mr. Zhong's personal history and
23 characteristics, he is 32 years old. He was born in
24 New Jersey and grew up in Lawrenceville, Georgia.

25 As we have heard, his mother and father were born in

N4e2ZhoS kjc

1 China. His father operated a small thrift shop and his mother
2 worked nights as a nurse. Mr. Zhong reports that he had no
3 relationship with either his father or his mother when he was
4 growing up and that he was left to fend for himself. He left
5 home for college at 18 and never returned. Mr. Zhong's father
6 is deceased. He has had no contact with his mother or his
7 younger sister.

8 Mr. Zhong reports that while in school he was bullied
9 and teased about his weight and his clothing, which came from
10 his father's thrift shop. The defendant reports that he had
11 no friends and spent most of his time when not in school in
12 his bedroom with his computer. He taught himself computer
13 coding while still in middle school.

14 As far as academics, Mr. Zhong excelled, and he won a
15 scholarship to the University of Georgia, where he obtained a
16 bachelor's degree in computer science. While still in
17 college, Mr. Zhong made large amounts of money from Bitcoin
18 mining.

19 His social problems continued, however. Mr. Zhong is
20 single, has never been married, has no children, and has
21 resided alone in Gainesville, Georgia, since approximately
22 2017.

23 As to mental health, I have reviewed a report
24 prepared by a psychiatrist retained by the defense,
25 Dr. Matthew Norman. Dr. Norman concludes that Mr. Zhong

N4e2ZhoS kjc

1 suffers from autism spectrum disorder. Dr. Norman reports
2 that Mr. Zhong exhibits "significant abnormalities in social
3 interactions, as evidenced by his lack of normal social and
4 peer relationships. His social relationships and
5 connectedness are nearly nonexistent."

6 Dr. Norman performed a number of tests on the
7 defendant that confirm his autism diagnosis.

8 As to employment, from 2012 to 2021, Mr. Zhong lived
9 primarily off of his Bitcoin mining; and prior to 2017, his
10 income came from the sale of legitimately obtained Bitcoin.

11 In 2017, however, Mr. Zhong sold some of the Bitcoin
12 he had stolen from Silk Road. Even after that time, however,
13 a significant amount of the defendant's income was derived
14 from his sale of legitimately obtained Bitcoin.

15 Currently Mr. Zhong derives income from a rental
16 property he owns in Athens, Georgia, as well as from a metal
17 cutting parts business that we talked about earlier. He's also
18 worked as an Uber and Lyft driver.

19 To summarize, the guidelines recommend a sentence of
20 27 to 33 months' imprisonment. The probation department has
21 recommended a variance down to 24 months' imprisonment, citing
22 Mr. Zhong's autism diagnosis, the lack of love and affection
23 in his family life, the unplanned nature of his crime, the
24 fact that he has not engaged in any other criminal activity
25 since stealing the Bitcoin so many years ago, and the fact

N4e2ZhoS kjc

1 that there are no innocent victims in "need of justice or that
2 need to be made whole financially."

3 The probation department also notes that, as a result
4 of Mr. Zhong's fraud, the government has made a "staggering
5 monetary recovery." If the Bitcoin that Mr. Zhong stole had
6 been seized at the time of Ulbricht's arrest, it would have
7 been worth a small fraction of the 3.5 billion it was worth at
8 the time of the government's seizure in late November 2021.
9 In this regard, the probation department emphasizes that
10 Mr. Zhong preserved more than 96 percent of the Bitcoin he
11 stole over the decade he possessed it.

12 Finally, the probation department cites Mr. Zhong's
13 cooperation with the government in passing control of billions
14 of dollars worth of Bitcoin to the government, citing the
15 presentence report, paragraph 143.

16 The government agrees that a downward variance is
17 appropriate and that a sentence of 24 months' imprisonment,
18 which is the bottom of the guidelines range, would be
19 excessive. Nonetheless, the government seeks an incarceratory
20 sentence.

21 The defendant seeks a nonincarceratory sentence.

22 With all of this in mind, I will now describe the
23 sentence I intend to impose, and I will ask the parties if
24 there is anything further they wish to say.

25 The aggravating factors here are that while Mr. Zhong

N4e2ZhoS kjc

1 accidentally discovered the glitch in Silk Road's Bitcoin
2 withdrawal system, he then repeatedly and intentionally
3 exploited that glitch to the tune of 50,000 Bitcoin, then
4 worth about \$620,000. As we have heard, he stole this Bitcoin
5 over several days in September 2012. Over the next nine
6 years, he repeatedly transferred the Bitcoin he had stolen to
7 other Bitcoin addresses. Indeed, he took steps over those
8 nine years to cover up his theft and continued possession of
9 the stolen Bitcoin. All of this was quite intentional,
10 deliberate conduct reflected in detailed ledgers that Mr. Zhong
11 maintained on his laptop, and it continued for many years, from
12 2012 until the search warrant was executed at Mr. Zhong's home
13 in November 2021.

14 While Mr. Zhong initially didn't spend the stolen
15 Bitcoin, in the last four years prior to the execution of the
16 search warrant, he spent about \$16 million of the stolen
17 Bitcoin, using the money to purchase several luxury cars, to
18 make real estate investments, and for travel, hotels, and
19 nightclubs. But for the search warrant, there is no reason to
20 believe that Mr. Zhong ever would have come forward to
21 surrender the stolen Bitcoin.

22 In mitigation, there is the fact that Mr. Zhong did
23 not initially set out to steal from Silk Road. He discovered
24 the glitch in the Silk Road system by accident. It was only
25 then that he decided to exploit that vulnerability.

N4e2ZhoS kjc

1 There is also Mr. Zhong's autism and his terrible
2 childhood. There is also the fact that Silk Road was a
3 criminal enterprise and that none of the Bitcoin that
4 Mr. Zhong stole was actually the property of Silk Road. All
5 of the funds that passed through Silk Road were legally the
6 property of the United States because all or nearly all of the
7 transactions that took place on Silk Road were unlawful. The
8 United States was thus the victim here and not Ross Ulbricht.

9 There is also the fact that Mr. Zhong cooperated with
10 the government after the search warrant was executed and the
11 Bitcoin was seized. It was only as a result of Mr. Zhong's
12 cooperation that the government was able to establish control
13 over the stolen Bitcoin, then valued at \$3.35 billion. That
14 amount is, of course, vastly more than what the government
15 would have obtained if it had seized the same Bitcoin from
16 Ulbricht at the time of his arrest in October 2013.

17 Having considered what are truly unique
18 circumstances, I believe that a sentence within the guidelines
19 range of 27 to 33 months' imprisonment would be excessive,
20 particularly in light of the defendant's autism diagnosis and
21 the fact that imprisonment is likely to be far more difficult
22 for him than for the typical defendant.

23 I also believe, however, that a nonincarceratory
24 sentence is not appropriate, given the highly sophisticated
25 and intentional nature of the defendant's crime, his active

N4e2ZhoS kjc

1 concealment of his possession of the stolen Bitcoin for more
2 than nine years, and the fact that he chose to liquidate and
3 spent \$16 million of the stolen Bitcoin.

4 I also agree with the government that there is a
5 crying need here for general deterrence. While the victim in
6 this case happened to be a criminal enterprise, the victim
7 tomorrow could be a legitimate business. We must impose a
8 sentence sufficient to deter others with the highly
9 sophisticated skills that Mr. Zhong has from committing
10 similar offenses.

11 For all of these reasons, I intend to impose a
12 sentence of a year and a day imprisonment.

13 With respect to supervised release, I intend to
14 impose a term of three years on the following conditions:

15 Mr. Zhong will not commit another federal, state, or
16 local crime.

17 He will not illegally possess a controlled substance.

18 He will refrain from the unlawful use of a controlled
19 substance.

20 I intend to suspend the mandatory drug testing
21 condition in favor of a special condition requiring drug
22 treatment and testing.

23 Mr. Zhong will cooperate in the collection of DNA as
24 directed by the probation officer.

25 I intend to impose the standard conditions of

N4e2ZhoS kjc

1 supervised release set forth in the presentence report along
2 with the following special conditions:

3 Mr. Zhong will perform 250 hours of community
4 service.

5 He will submit his person and any property,
6 residence, vehicle, papers, computer, other electronic
7 communication and data storage devices, cloud storage or media
8 and effects to a search by any U.S. probation officer where
9 there is a reasonable suspicion that the violation of the
10 conditions of supervised release has taken place. Failure to
11 submit to a search may be grounds for revocation. Mr. Zhong
12 will warn any other occupants that the premises may be subject
13 to search pursuant to this condition. Any search shall be
14 conducted at a reasonable time and in a reasonable manner.

15 Mr. Zhong will participate in an outpatient mental
16 health treatment program approved by the U.S. Probation
17 Office. I authorize the release of any available
18 psychological and psychiatric evaluations and reports to the
19 healthcare provider.

20 Mr. Zhong will participate in an outpatient treatment
21 program approved by the U.S. Probation Office to include
22 testing to determine whether he has reverted to the use of
23 drugs.

24 Mr. Zhong will provide the probation officer with
25 access to any requested financial information and he will not

N4e2ZhoS kjc

1 incur new credit charges or open additional lines of credit
2 without the approval of the probation officer.

3 It is my intention that Mr. Zhong be supervised by
4 the district of his residence.

5 As to a fine, the guidelines range is \$10,000 to
6 \$100,000. Mr. Zhong completed a financial statement claiming
7 assets totaling \$1,647,770.55, citing the presentence report
8 paragraph 111. Based on the information available to me, I
9 conclude that he has not demonstrated an inability to remit a
10 fine. The probation department has recommended that I impose
11 a fine of \$10,000. While acknowledging the enormous
12 forfeiture in this case, a fine is appropriate given the
13 circumstances, including the defendant's decision to spend \$16
14 million worth of the Bitcoin he had stolen. Accordingly, I
15 intend to accept the probation department's recommendation and
16 to impose a fine of \$10,000.

17 I am required to impose a \$100 special assessment.

18 As to forfeiture, I entered a final order of
19 forfeiture on March 14, 2023, which provides for the
20 forfeiture of Bitcoin, physical Bitcoin, as well as the cash,
21 gold, and silver seized from the defendant's home, and his
22 interest in RE&D Investments. In a prior consent preliminary
23 order of forfeiture, the defendant had agreed to the
24 forfeiture of these items, plus the entry of a money judgment
25 in the amount of \$42,747,425.95.

N4e2ZhoS kjc

1 Restitution is not applicable in this case because
2 all victim losses, as I mentioned, are directly forfeitable
3 proceeds of criminal activity.

4 Mr. Bachner, is there anything further you wish to
5 say?

6 MR. BACHNER: No, your Honor.

7 As far as the surrender date, I don't think the
8 government is asking for any change in bail status. Your
9 Honor, if we could have perhaps just a little bit longer of a
10 surrender date so he can take care of this situation with his
11 dog, we would greatly appreciate it.

12 THE COURT: And what do you have in mind, Mr. Bachner?

13 MR. BACHNER: How much, your Honor, would you normally
14 provide?

15 THE COURT: Well, there is nothing normal about this
16 case. I was thinking about 90 days.

17 MR. BACHNER: I think 90 days would be fine, your
18 Honor, and if for some reason something extenuating happens,
19 we will advise the Court and you can make a decision at that
20 point, if that's okay with your Honor.

21 THE COURT: It is.

22 MR. FELTON: The government has no objection, your
23 Honor.

24 THE COURT: Thank you, Mr. Felton.

25 Anything else from either Mr. Bachner or --

N4e2ZhoS kjc

1 MR. BACHNER: No, your Honor. We don't have
2 administratively any recommendation at this point, so I guess
3 a jail, like, near his home is fine, Judge, and if we think of
4 anything in the interim within the next 24 hours or so, by
5 Monday we will let you know, if that's okay.

6 THE COURT: That's fine.

7 MR. BACHNER: Thank you.

8 THE COURT: Mr. Zhong, is there anything further you
9 wish to say?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Mr. Felton, anything else for the
12 government?

13 MR. FELTON: No, your Honor. There are no open
14 counts, for the record, and the Court may just wish to advise
15 the defendant of his right to appeal, that's all.

16 THE COURT: All right. Mr. Zhong, for the reasons I
17 just stated, it is the judgment of this Court that you be
18 sentenced to a year and a day imprisonment and three years
19 supervised release. Your term of supervised release will be
20 subject to the mandatory, standard, and special conditions I
21 just mentioned. You are ordered to pay a fine of \$10,000 and
22 a special assessment in the amount of \$100. Forfeiture is
23 imposed as set forth in the orders of forfeiture that I
24 mentioned a moment ago.

25 I do recommend to the Bureau of Prisons that Mr. Zhong

N4e2ZhoS kjc

1 be incarcerated as close as possible to his home in Georgia so
2 that he may maintain ties with his friends during his period
3 of incarceration.

4 I am going to set surrender date of July 14, 2023.
5 It is my expectation that Mr. Zhong will be designated to a
6 facility by July 14, 2023. However, if he has not been
7 designated to a facility by July 14, 2023, he will surrender
8 to the United States Marshal for this district by 2:00 on that
9 day.

10 Mr. Zhong, were you not to surrender on July 14,
11 2023, by 2 p.m., you would be committing another federal crime
12 for which you could receive a separate and consecutive
13 sentence.

14 I am required to advise you of your appeal rights.
15 You can appeal your conviction if you believe that your guilty
16 plea was unlawful or involuntary or if there was some other
17 fundamental defect in the proceedings that was not waived by
18 your guilty plea. You also have a statutory right to appeal
19 your sentence under certain circumstances. With few
20 exceptions, any notice of appeal must be filed within 14 days
21 of judgment being entered in your case. Judgment will likely
22 be entered on Monday. Your attorneys will discuss with you
23 whether or not you wish to file a notice of appeal. If you
24 are not able to pay the costs of an appeal, you may apply for
25 leave to appeal *in forma pauperis*. If you request, the Clerk

N4e2ZhoS kjc

1 of Court will prepare and file a notice of appeal on your
2 behalf.

3 Mr. Felton, is there anything else for the
4 government?

5 MR. FELTON: No, your Honor. Thank you.

6 THE COURT: Mr. Bachner, anything else for the
7 defense.

8 MR. BACHNER: No, your Honor. Thank you so much.

9 THE COURT: All right. Thank you. We are adjourned.

10 oOo